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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE SECRETARY  
RULES AND ADJUDICATION STAFF

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In the Matter of )  
 )  
BALTIMORE GAS )  
& ELECTRIC CO., et al. )  
 )  
(Calvert Cliffs Unit 1 and )  
Unit 2) )  
\_\_\_\_\_ )

Docket Nos. 50-317-LR  
50-318-LR  
(License Renewal)  
  
ASLBP No. 98-749-01-LR

THE NATIONAL WHISTLEBLOWER CENTER'S  
REPLY TO THE NRC STAFF AND BGE'S ANSWER TO NWC'S  
PETITION TO INTERVENE AND REQUEST FOR HEARING

Petitioner, the National Whistleblower Center (NWC), by and through counsel, hereby files this reply to the answer filed with this Board by the NRC Staff and Baltimore Gas and Electric Company's (BGE) Answer to Petition to Intervene and Request for Hearing of the National Whistleblower Center. In this reply NWC responds to the assertions that NWC lacks standing to intervene because: "(1) NWC has no members which it may represent (and no organizational injury in its own right), (2) NWC is not seeking to protect any interests that are germane to its organizational purpose, and (3) NWC has ignored the requirement to identify the aspects of the subject matter as to which it wishes to intervene." BGE's Answer at p.1. The NWC still respectfully reserves the right to amend and supplement its petition up to 15 days before the first prehearing conference without prior approval of the presiding officer pursuant to the controlling regulations and rules of practice. See, e.g., 10 C.F.R. § 2.714(a)(3); Arizona Public Service, (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-91-4, 33 NRC 153, 159-60 (1991).

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Attached to this document is an affidavit executed by an officer of the National Whistleblower Center. This affidavit provides support for the factual statements raised herein.

**I. BGE's ARGUMENTS THAT NWC LACKS STANDING ARE WITHOUT MERIT.**

**A. Board Members and Officers of an Organization Satisfy the Representational Standing Test.**

BGE asserts that the NWC cannot establish representational standing because the NWC is not a membership based organization. BGE Answer at 4. BGE's contention lacks merit. The NWC may act in a representative capacity for the members of its board of directors and its officers and "may treat their interest as its own for the purposes of establishing its standing to sue when those interests 'are germane to the organization's purpose.'" Action on Smoking & Health (ASH) v. Dept. of Labor, 100 F.3d 991, 992 (D.C. Cir. 1996), citing Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977). As the U.S. Court of Appeals for the D.C. Circuit held in that case, although ASH, a charitable trust, did not fit the description of a traditional membership organization, the court decided that the organization had standing on standard grounds and that the "injury to the interests of one of its board members is therefore enough to allow ASH to proceed with the lawsuit." Id., citing Warth v. Seldin, 422 U.S. 490, 511 (1990); Lujan V. Defenders of Wildlife, 504 U.S. 555, 563 (1992).

Significantly, the NWC alleged in its original Petition to Intervene in this proceeding that the interests of one of its board members and one of its officers would be injured if the NRC grants BGE's application for license renewal of 20 years. Petition to Intervene, pp. 2-3. Also see, affidavits submitted with Petition to Intervene. Therefore, in this case, Rev. L. William

Yolton, a member of the NWC Board of Directors, and Ms. M. Joyce Claro, an officer of the NWC, qualify as "members" for the purpose of determining representational standing.

**B. The NWC Is Seeking to Protect Interests That Are Germane to its Organizational Purpose and Expertise.**

BGE asserts that the NWC does not meet the "germaneness" prong of the Hunt test. BGE's Answer at 7-8; See Hunt, 432 U.S. at 343. Once again, BGE's contention lacks merit. BGE urges too restrictive a reading of Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 N.R.C. \_\_\_, slip op. at 4 (1998), as well as the cases cited in that case. In Private Fuel Storage the Commission refers to Humane Society of the U.S. v. Hodel, 840 F.2d 45, 58-59 (D.C. Cir. 1988), as the leading case on the issue of germaneness. Private Fuel Storage, CLI-98-13, slip op. at 7. In Humane Society, the D.C. Circuit required that "an organization's litigation goals be pertinent to its special expertise and the grounds that bring its membership together" and that the purpose of the test is to "ensure a modicum of concrete adverseness by reconciling membership concerns and litigation topics by preventing associations from being merely law firms with standing." Humane Society, 840 F.2d at 57-58. However, the D.C. Circuit further notes that it characterizes the germaneness test "as mandating mere pertinence between litigation subject and organizational purpose" and that it joins a number of other courts that "have declared it undemanding." Id., 840 F.2d at 58, citing National Constructors Association v. National Electrical Contractors Association, 498 F.Supp. 510, 521 (D. Md. 1980)(defining germaneness standard as allowing suits by groups whose purposes are "pertinent or relevant to" claim at issue); American Insurance Association v. Selby, 624 F.SUPP. 267,271 (D.D.C. 1985)(stating that "an association's litigation interests must be truly unrelated

to its organizational interest before a court will declare that those interests are not germane”); Medical Association of Alabama v. Schweiker, 554 F. Supp 955, 965 (M.D. Ala. 1983)(stating that germaneness test requires that “the injury to [an association’s] members has some reasonable connection with the reason the members joined the organization and with the objectives of the organization”).

The NWC more than satisfies the germaneness requirement even under BGE’s narrow application of the test. Since 1988, and after its incorporation in the District of Columbia in 1992, the NWC has worked with employees in the nuclear power industry to advocate safety issues. In fact, utilizing employee whistleblowers within the nuclear power industry to address health and safety issues is part of the core mission of the NWC, which is a nonprofit educational and advocacy organization located in the District of Columbia committed to environmental protection, nuclear safety, government accountability and protecting the rights of employee whistleblowers. The NRC itself, on numerous occasions, has recognized that the protection of employee whistleblowers at nuclear power plants falls within the core safety-related mission of the NRC. U.S. v. Construction Products Research, Inc., 73 F.2d 464, 471-72 (2<sup>nd</sup> Cir. 1996) (enforcing NRC subpoena regarding treatment of whistleblowers based on public health and safety issues). The NWC has assisted employees in challenging the payment of “hush money settlements” in the nuclear industry (the practice of paying witnesses to withhold testimony and/or information from the NRC and other government agencies about safety or environmental violations) and to provide whistleblowers with legal representation that they could not obtain elsewhere. The NWC has also assisted employees report and litigate serious whistleblower allegations about safety problems and fraudulent conduct in the design, construction and

operation of nuclear power plants. The NWC has directly initiated legal proceedings to expose underlying health and safety concerns, including proceedings before the NRC staff, and the NWC has also filed or sponsored several show cause petitions pursuant to 10 C.F.R. § 2.206 for nearly a decade regarding violations of NRC safety regulations at several nuclear power plants licensed by the NRC. See, e.g. In the Matter of Carolina Power and Light Co., 38 NRC 356 (D.D. 1993); In re Texas Utilities, 37 NRC 477 (D.D. 1993).

Moreover, prior to the filing of the original Petition to Intervene in this proceeding the NWC board of directors determined that intervention in this proceeding was in accordance with the organization's objectives and mission, and the NWC board expressly decided to intervene in this proceeding.

Certainly, NWC's challenge to BGE's application for renewal of its license to operate Calvert Cliffs on the grounds "that the facility cannot safely operate past the original specified lifetime and poses an unacceptable health and safety risk to the public," Petition to Intervene, p. 1, relates to NWC's purpose of promoting democratic government and advancing the rights of those who make disclosures regarding "environmental protection or health and safety violations." NWC's challenge in this proceeding relates to its core mission of promoting environmental protection and nuclear safety and is an extension of its participation in 2.206 proceedings and other proceedings before the NRC staff concerning nuclear safety issues over the past decade.

**C. The National Whistleblower Center Meets the Test for Organizational Standing.**

The National Whistleblower Center has standing in its own right. The NRC's rules of practice permit "[a]ny person whose interest may be affected by a proceeding and who desires to

participate to intervene" to "file a written petition for leave to intervene" and request a hearing. 10 C.F.R. § 2.714(a)(1). The NRC's regulations also broadly define "person" as "any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group..." 10 C.F.R. § 2.4. Thus, the NWC is entitled to participate as an organization in its own right because it is considered a "person" due to its status as a corporation and as a group.

Almost the whole of Washington, D.C. is within the 50 mile evacuation plan zone of Calvert Cliffs. The NWC owns property at 415 Florida Ave., N.W., Washington, D.C. 20001.<sup>1/</sup> Moreover, the NWC conducts all of its day-to-day business in Washington, D.C.<sup>2/</sup>, and all of the NWC's board meetings are held in Washington, D.C. Five members of the NWC board of directors reside and conduct regular business on a day-to-day basis within the District of Columbia,<sup>3/</sup> and a sixth member, Rev. Yolton also resides well-within a 50 mile radius of the plant. Hence, the NWC's property, health and safety and financial interest will be directly and

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<sup>1/</sup>This property was donated in 1994 and has been in the possession of NWC since that time however due to defects in the title the deed has of yet not been registered.

<sup>2/</sup>For example, the NWC's paid full time and part time employees work within the fifty mile radius, one of its Board members resides and conducts business on behalf of the Center within the fifty mile radius, many of the NWC's clients reside in and travel within the fifty mile radius and between 1-3 full-time student interns work for the NWC within the fifty mile radius. An accident at Calvert Cliffs could result in the death of the majority of NWC board members, the death of its entire paid and volunteer staff, the death of numerous clients and the complete destruction of its ability to conduct its non-for-profit mission. Moreover, the NWC regularly conducts activities before the federal government and the enforcement mechanisms of that government play a vital role in the mission of the NWC. An accident at Calvert Cliffs could result in the destruction of the majority of the central government of the United States, resulting in the death of NWC clients, NWC Advisory Board members and the inability of the NWC to insure that the federal government exercises its proper oversight responsibility on matters related to the public health and safety. See Joyce Claro affidavit.

<sup>3/</sup>William Worthy, Stephen Kohn, Michael Kohn, David Niblack and Annette Kronstadt.

adversely affected if the Board grants the application of BGE for the renewal of the Calvert Cliffs operating license. Northern States Power Company (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 315 (1989)(residing and holding property within an area expected to be impacted. . . so as to jeopardize the health and safety of the Requestor can provide a satisfactory basis to establish standing.). As stated in the NWC's Petition to Intervene, the licensee's application to operate Calvert Cliffs for 20 years beyond the time permitted by the original operating license poses a risk to the public health and safety and directly to NWC's organizational interests. It is not speculative for NWC to assert that if a serious accident at Calvert Cliffs occurs during the proposed 20 year extended operating license resulting in an offsite release of radiation, the day-to-day functioning of the NWC could be adversely affected, its board members, employees, volunteers, and officers could suffer adverse health effects (including death), its property and financial interests diminished or destroyed, and the organization could be impaired or cease to exist.

Accordingly, the NWC as an organization has standing in its own right to intervene in this proceeding.

**D. Due to the Proximity of the NWC to the Calvert Cliffs Nuclear Plant Injury in Fact Is Presumed.**

"A petitioner may demonstrate the potential for injury if the petitioner, or its members, live, work, or play, for example in an area that might be affected by the release of nuclear radiation from the plant." Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-4, 33 NRC 153, 155(1991). In Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30

(1989), the Commission stated "[i]t is true that in the past, we have held that living within a specific distance from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto. . . [h]owever, those cases involved the construction or operation of the reactor itself, with clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences."

The NWC asserts that BGE's application for license renewal is the type of proceeding that involves clear implications for offsite consequences. In Pacific Gas and Electric Company, (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 11 (1993), a proceeding concerning the proposed extension of operating licenses to recover into those licenses the period of construction of the reactors, the Licensing Board found that being exposed to a risk of an accident with offsite consequences for an additional 13 to 15 years was significant enough to possess an obvious potential for offsite consequences. "The risk, even though it then may have been evaluated by NRC as being acceptably small, nevertheless continues -- it is in part a function of time -- and constitutes the necessary showing of 'injury in fact' for this proceeding." Id.

In this case, BGE's renewal application to operate Calvert Cliffs for another 20 years involves clear implications of potential offsite consequences and hazards to the public health and safety. Although the Commission has pre-determined that the scope of the proceedings should be limited to the narrow issue of aging-management issues, even those narrowly tailored issues do not minimize an increased risk of offsite consequences if BGE is permitted to operate Calvert



Cliffs for another 20 years.<sup>4/</sup> Indeed, the aging-management issues that are indisputably within the scope of this proceeding could be a likely root cause of an accident resulting in an offsite release of radiation since aging-management issues can affect the fundamental operating parameters and safety of the plant. If BGE's renewal application is granted it will extend the risk of harm to NWC resulting from an accident with offsite consequences for an additional 20 years. Accordingly, NWC's Petition to Intervene satisfies "injury-in-fact" requirement.

**E. BGE's Arguments Concerning the NWC's Alleged Failure to Identify Specific Aspects of the Subject Matter on Which It Wishes to Intervene and Its Alleged Failure to Demonstrate Redressability Are Without Merit.**

In Arizona Public Service Company, et al (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-4, 33 NRC 153, 159 (1991), which was cited by BGE, the Board held that aspects of the operating license proposed for amendment were already clearly set out in the Federal Register notice and therefore:

Petitioners need not be more particular until they file their list of contentions. Most important, the Licensees and the NRC Staff are well informed by early notice what any proceeding on the proposed amendments would be about.

Id.

In this proceeding the Federal Register notice also clearly sets out the aspects of the license renewal application that are at issue. The notice states:

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<sup>4/</sup>Pursuant to Commission regulations Petitioner has the right to base contentions on pure issues of law. 10 C.F.R. § 2.714. Accordingly, Petitioner should be permitted to challenge the Commission's pre-determination to limit the scope of these proceedings to the aging-management issues specified in the July 8, 1998 Federal Register Notice as a legal contention, and Petitioner does not agree that the scope of these proceedings can be so limited as a matter of law. See, 10 C.F.R. § 2.714(a), (b) and (e).



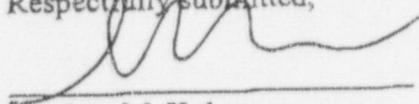
fundamental fairness and due process and compound violations of the Commission's own regulations, federal law, the Administrative Procedure Act, constitutional law, and the dictates of public policy that have already been committed in this proceeding. See, e.g., Petitioner's Motion to Vacate Order CLI-98-14 (Aug. 21, 1998); Petitioner's Motion for Enlargement of Time (Aug. 21, 1998); NWC's Petition for Review (Sept. 11, 1998).

Moreover, the original Petition to Intervene does indicate a redressable injury. NWC alleged that BGE cannot safely operate Calvert Cliffs Units 1 and 2 past the original specified lifetime and that if the renewal license was extended it would pose an unacceptable health and safety risk. NWC also requested that the licensee not be granted its renewal license until after it has demonstrated at a hearing that BGE can safely operate Calvert Cliffs Units 1 and 2 for the requested renewal term of 20 years and that the operating license not be renewed until such time as it is determined that the plant can, in fact, be operated safely and within the bounds of the law for the requested renewal term. If a hearing is granted, the proceeding will redress the injuries to NWC's interests as raised by the Petition to Intervene.

## II. CONCLUSION

For the foregoing reasons, the National Whistleblower Center has sufficiently demonstrated its standing to intervene in this proceeding, and the request that the petition to intervene be dismissed should be denied. In the alternative, if the NWC is not granted permission to represent the interests of Rev. Yolton and/or Ms. Claro in this proceeding, these two persons should be permitted to intervene in this proceeding in their individual capacities.

Respectfully submitted,



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